

DEPARTMENT OF HEALTH PROFESSIONS - DIRECTIVES

DIRECTIVE NO.: 4.7

EFFECTIVE: 10-21-03

SUPERSEDES: 4.2

APPROVAL: /s/ Robert A. Nebiker

4.7 **COMPLIANCE WITH LICENSURE LAWS**

Purpose: To obtain compliance with laws requiring licensure, certification or registration.

Policy: It is the policy of the Department to obtain compliance with laws requiring licensure, certification and registration of health care providers and where necessary, pursue criminal charges to obtain compliance.

Applicability: This directive does not apply to regulatory board decisions regarding consideration of applications for issuance or reinstatement of any license, certification, or registration.

Procedure:

A. Cases Where There Is No Evidence of Harm – The following procedure shall be used in cases where there is initial evidence of unlicensed activity in which there is no evidence of harm or a violation of §54.1-2409.1 of the *Code of Virginia*.

1. The Case Intake Analysts (CIA) will review all allegations of unlawful conduct and make a determination to whether an allegation indicates unlicensed practice or acts, including any violation of law that requires licensure, certification or registration.
2. If the case involves no injury (physical, mental, financial etc.) to a patient or the public, and there are no other previous allegations or convictions of unlawful practice by this respondent, a letter will be sent to the respondent informing him of the law which requires licensure certification or registration. A response will be invited but will not be required. A copy of the letter sent to the respondent also will be sent to the applicable executive director for information.
3. In the absence of evidence of injury and where there are no prior complaints or convictions, the CIA will make a determination that no injury has occurred and will request from the Director of Enforcement that the case be closed. A record of the letter sent to the person who may have engaged in unlicensed practice will be retained for a period of ten (10) years together with any response received from the respondent.

B. Cases Involving Harm or Repeated Occurrence – The following procedures shall be used where there is evidence of harm, on going unlawful practice, or a violation of §54.1-2409.1 of the *Code of Virginia*.

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1. If upon review, there is evidence of either a repeated unlicensed practice or injury to a patient, client, or the public; or, if requested by an Attorney for the Commonwealth, the complaint will be sent to a selected Investigator.
2. The investigator will investigate the case, including interviewing witnesses, gathering appropriate evidence, utilizing surveillance and undercover techniques and interviewing the respondent, as necessary to gather sufficient evidence to warrant criminal prosecution or closure.
3. The case will be referred to the appropriate Commonwealth's Attorney (CA) for possible prosecution. A copy of the investigation report will also be sent to the relevant Board as information or consideration if the respondent has a pending license or is licensed in another occupation.

If the respondent does not provide credible evidence that the unlicensed practice has ceased, the matter will be readdressed with the appropriate CA. If the CA elects to prosecute, a warrant will be obtained through the jurisdiction's magistrate in the jurisdiction where the offense occurred.

The Investigator will advise the Director of Enforcement in writing of the CA's response.

4. If the CA declines prosecution, the case may be closed with an undetermined finding or referred to the Director of DHP for referral to the Office of the Attorney General (OAG) for an injunction.
5. Unlicensed practice or acts involving the performance of invasive procedures for which a license is required, or the administration, prescribing, selling, distributing, or dispensing of a controlled drug or practicing a profession or occupation after having his license to do so suspended or revoked, constitutes a Class 6 felony in accordance with § 54.1-2409.1 of the *Code of Virginia*. The Investigator will present this information to the Commonwealth's Attorney of that jurisdiction for prosecution. If the CA declines prosecution of any of these cases, the Investigator shall immediately refer this matter to the Director of DHP.
6. Upon witnessing a misdemeanor unlicensed activity meeting the criteria outline in Section B of this directive, investigators with summons authority may issue a summons in accordance with § 54.1-2506.C of the Code of Virginia or obtain a warrant. Investigators with summons authority must use a summons approved by the Department and must have knowledge of available court dates and the availability of the agreed CA needed for prosecution. Any Investigators may obtain a warrant, after obtaining concurrence with the CA, after witnessing a misdemeanor unlicensed activity.